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Royal Commission on the, 1932



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REPORT OF

The Royal Commission

Appointed to Inquire into Certain
Matters concerning

The Hydro-Electric Power Commission of Ontario

Namely:

- (a) The Mississippi and Madawaska Purchase.
- (b) The Possible Relationship of the Payment to John Aird, Jr.,
to the Purchase of Power from the Beauharnois Interests.
- (c) Purchase of the Assets of the Dominion Power and Trans-
mission Company Limited.

COMMISSIONERS

THE HONOURABLE MR. JUSTICE W. R. RIDDELL
Justice of the Court of Appeal of the Supreme Court of Ontario

THE HONOURABLE MR. JUSTICE GEORGE H. SEDGEWICK
Justice of the High Court of Justice of the Supreme Court of Ontario

TORONTO

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REPORT OF THE ROYAL COMMISSION APPOINTED TO INQUIRE INTO CERTAIN MATTERS CONCERNING THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO.

TO HIS HONOUR THE LIEUTENANT-GOVERNOR IN COUNCIL.

MAY IT PLEASE YOUR HONOUR:

We, the Commissioners appointed by Order-in-Council dated 19th August, 1932, to conclude an inquiry conducted by the Honourable Mr. Justice Orde into certain matters concerning the Hydro-Electric Commission of Ontario and for that purpose to review the evidence taken and the facts brought out in the proceedings before him and before the Honourable Mr. Justice Middleton and to take any further evidence we might think necessary or desirable (with power to recall witnesses previously examined) and to report upon the evidence and facts brought out in the inquiry, have the honour to present our Report.

The subject matters of the inquiry are thus described:

- (a) The propriety of the payment by the Hydro-Electric Power Commission of Ontario to one John Aird, Jr., of the sum of \$50,000 in connection with the purchase by the Hydro-Electric Power Commission of Ontario of the M. J. O'Brien Limited power interests on the Mississippi and Madawaska Rivers.
- (b) The payment of \$125,000 by the Beauharnois interests to John Aird, Jr., and its relationship, if any, to the purchase of power by the Hydro-Electric Power Commission of Ontario.
- (c) The purchase by the Hydro-Electric Power Commission of Ontario of the property, assets and undertaking of the Dominion Power & Transmission Company Limited and the price paid therefor.

The Honourable Mr. Justice Orde, whose death we greatly deplore, continued an inquiry commenced by the Honourable Mr. Justice Middleton but not concluded by him owing to his regrettable illness, into items (a) and (c) and he commenced an inquiry into item (b). He had concluded the taking of evidence with respect to all these matters but his death intervened before he made his report.

The Honourable Mr. Justice Middleton at the commencement of the inquiry appointed counsel to assist him and his appointment was continued by the Honourable Mr. Justice Orde and by us. Counsel representing the Aylmer Public Utilities Commission, Mr. C. Mortimer Bazeu, Mayor of the City of Kitchener; Mr. Mitchell F. Hepburn, M.P.; Mr. W. E. N. Sinclair, M.L.A., K.C., and Mr. H. C. Nixon, M.L.A., appeared before the former Commissioners and before us and were given full liberty to cross-examine witnesses and to have witnesses

subpoenaed who might, in their opinion, give relevant evidence. We publicly requested persons having any relevant information to submit the facts so that they might be investigated. No communication warranting further investigation was received by us.

We have carefully reviewed the evidence and proceedings before the former Commissioners and find that nothing relevant has been overlooked. The investigation has been thorough and we find ourselves in agreement with the rulings made by prior Commissioners during the taking of evidence. Their rulings made from time to time gave proper effect to the needs of the case and in the end no relevant evidence was excluded. The Hydro Commission was represented throughout by its counsel and greatly assisted in the prosecution of the inquiry. The Commission produced voluminous papers and records and the indications in the record convince us that its disclosure and production of documents was complete.

After a most thorough examination of the record and after hearing representations made by counsel oral or written as counsel preferred, we have reached clear conclusions as to the facts bearing on the matters covered by the reference and we beg to report thereon as follows:

PAYMENT OF \$50,000 TO JOHN AIRD, JR.

The facts of this transaction are not substantially in dispute; and to form a judgment upon the propriety of the payment, it will be well to set out these facts in their historical order.

M. J. O'Brien Limited was the owner of certain power properties on the Madawaska and Mississippi, rivers in Eastern Ontario, having a potential capacity in excess of 100,000 h.p. with a present development of 6,000 h.p. at Calabogie and Galetta having distribution systems serving adjacent municipalities. Fully to develop this property, it would be necessary to acquire from the Province certain flooding and storing rights.

There were five stages of negotiation before the Commission acquired the property; these, so far as of importance on this inquiry, are as follows:

1. In 1926, Mr. J. G. G. Kerry, who was the Consulting Engineer of the O'Brien Company, though he was domiciled in Toronto, while the Company was domiciled in Ottawa, had an option on these properties, the precise terms of which are immaterial; Kerry interested Messrs. Wood, Gundy & Company and Aird, MacLeod & Company, two financial firms and Aird-Millard, an Engineering firm, all of Toronto in the scheme; and an option dated January 27th, 1927, was obtained from the O'Brien Company.

2. The arrangements between Kerry and the said firms contemplated full investigation as to the possibilities for the production of electric energy and the sale of a substantial part of the power produced to the Hydro-Electric Commission. Very extensive investigations were made, involving the expenditure of some \$50,000 to \$75,000; and considerable effort was made to procure a contract with the Commission as had been contemplated. These negotiations failed and late in 1927, the option of January 27th, 1927, was given up. This option was for

\$2,000,000, \$500,000 payable in cash. Thereupon the O'Brien Company raised its price to \$2,500,000 and gave an option for that sum to one person, as well as quoting that price to several parties inquiring—the proposition that the Company should give an option for \$2,125,000 was rejected by the Company.

3. Some time after the lapse of this option, John Aird, Jr., on behalf of his firm, Aird-Millard, entered into an understanding "gentleman's agreement," not in writing or enforceable at law but such as would be respected by all honourable men, and, as such, substantially equivalent to an option. The scheme was for Aird to develop power and sell it to the Commission, not materially different from that in period 2, above. Very considerable negotiation was had, extensive investigation made by the Commission through its professional staff; and, in the end, the proposition of Aird was rejected.

4. Early in 1929, Aird offered another proposition to the Commission, which has been called the "Amortization Scheme," which contemplated the production of power by Aird, the absorption of the same by the Commission, and the property passing to the Commission at the end of a certain fixed number of years. This proposition was also rejected after consideration; and it was arranged that Aird should withdraw from the scene and the Commission deal directly with the O'Brien Company.

5. It was considered—and rightly so—that Aird "should receive some reasonable payment" should the Commission secure the property within a reasonable time; this was communicated to Aird, the sum of \$25,000 being suggested but not accepted. Subsequently the Commission authorized negotiation with him on the basis of \$50,000 and expenses in all not to exceed \$100,000. There was no sum absolutely determined but it was arranged that Aird should withdraw, the Commission deal directly with the owner, and if it acquired the property within twelve months, it would determine the compensation it could make to him for his assistance, taking into consideration his retirement. Negotiations were carried on direct with the owner, during the course of which, it was made manifest by the owner that Aird's claims were necessary to be considered, O'Brien mentioning $2\frac{1}{2}$ per cent. as the proper amount to be paid him, and offering to accept \$2,500,000 and settle with Aird. This was not accepted, but the Commission's Chairman and professional staff met and after consultation and discussion, it was unanimously agreed to make an offer to the owner, thus expressed in the memorandum sent by the Chairman to the Prime Minister, March 14th, 1929: "A cash offer of \$2,075,000 that we in addition pay Mr. Aird $2\frac{1}{2}$ per cent. on the \$2,000,000 or pay \$50,000 making the total cost of the property \$2,125,000." The Commission later refused to purchase timber limits which were covered by this price and the amount payable to O'Brien was reduced to \$1,800,000 which made the total cost \$1,850,000. The offer was accepted and as amended was carried through and the sum of \$50,000 was paid to Aird thereunder, while the O'Brien Company itself paid Kerry who also was considered to have claims, not of importance on this inquiry. This sum was divided equally between the two partners; and no other person, no political or other party received any portion thereof. It is this sum of \$50,000 considered rightly as part of the total cost of the property, into the propriety of the payment of which we are commissioned to inquire.

Having to investigate only the propriety of this payment by the Hydro-Electric Commission, we have no concern with subsequent proceedings,

except as they may assist in determining the propriety of the payment itself—but it may be said that the course pursued in connection with reimbursing the Commission and obtaining the approval of the Government was the usual one, and the Prime Minister was fully informed as to the facts. In considering the propriety of this payment, certain facts may be kept in mind.

It is satisfactory to know that the Engineering staff of the Hydro-Electric Commission are on all hands accredited with competency and perfect integrity; the contrary is not so much as suggested, but it is explicitly stated that no imputation is made against them in that regard. Nor is it suggested that there was any improper motive influencing anyone connected with the Commission to have the payment made. Consequently, if the word "propriety" as used in our Commission were to be interpreted as meaning subjective propriety, conduct honestly believed to be proper, the "propriety" must necessarily be affirmed at once. But we have ruled—and abide by the ruling—that it is not only subjective propriety that is to be investigated but also did those responsible for the payment, i.e., the Commission and its engineers in determining to make the payment omit to do what should have been done or do what should not have been done before determining to make the offer to buy which has been mentioned at a total cost of \$2,125,000, including the timber limit or \$1,850,000 without the limit.

A misunderstanding might arise through the terminology employed in some of the documents; for example, one of the letter writers, Mr. Kerry, not infrequently speaks of the negotiations being interfered with or governed by "politics" or political considerations. It is plain from the explanations given that what was meant was not "politics", etc., in the ordinary acceptation of language but "public policy," the policy to be followed in respect of acquiring power or property. In this acceptation of the words, it is obvious that the Hydro-Electric Commission must necessarily pursue the policy in such respects as should be determined by those responsible to the people and their Representatives in the Legislature. So, too, the expression "*Persona grata*" is used to denote persons who are to be paid; but both writer and recipient understood the firm of Aird-Millard alone to be meant. There is absolutely nothing to indicate that there was anyone, "*persona grata*" in the usual sense of the words, i.e., a person or party to whom the Government desired to have favour shown. The Prime Minister was seen by certain persons in the stages 2, 3, and 4 above mentioned. Aird complained to him of the refusal of the Commission to make a contract for power with him, indicating that this was inconsistent with the declared policy of the Government—this he had a perfect right to do, as the Prime Minister had a perfect right to listen to a complaint of deviation from a declared policy; and the conduct of the Prime Minister in refusing to interfere with the Commission, and referring those speaking to him about the Commission to the Chairman is unexceptionable. The other matter as to which he was seen, was whether the rights of flooding, etc., necessary to the proposed scheme would be granted in the event of a power contract with the Commission and the answer was that if a sale was effected to the Commission, the usual flooding rights would be granted. It is not suggested that anything said or done, omitted to be said or done by the Prime Minister was improper or objectionable in any way. Whether those who spoke to him or any of them believed in their or his "political influence" having some effect upon the conduct of the Prime Minister or the Commission, we do not inquire—we are not concerned with the propriety of any but those responsible for the payment of the money.

Sometimes the \$50,000 was referred to as included in the total "cost of the property" and another time the word "services," etc., was described as the consideration for this payment. We have no concern with the terminology employed except as evidentiary of the propriety of the payment itself.

It being borne in mind that the Hydro-Electric Commission was formed and is maintained as a means of providing the people of the Province with electric energy, not simply as a means of revenue for the Province; that the future wants of the Province as well as the present must be considered; that it is the policy of the Province to acquire for such purpose the available water powers so far as that can be effected without undue interference with private interests and investments, it was and is the duty of the Commission, when dealing with a proposed purchase to make full and careful inquiry into the existing state of the property and its potentialities, the power that is reasonably expected to be obtained from it, the advisability of acquiring it in view of the existing and probable future market for the energy to be produced, the expense to be looked for in increasing the present available power, etc., etc., as thoroughly as a private Corporation, though with a careful eye to the wants of the public, actual and to be reasonably expected—not, indeed, with the view of a private corporation alone, the profit of the Corporation itself as a money-making scheme. It is conclusively proved that the most careful investigations were made by wholly competent and honest engineers into the advisability of acquiring the property, the needs existing and to be expected for so acquiring it as well as the price that should be paid for it. The engineering staff were unanimous in the proposition to make an investment of \$1,850,000 (without the limits) as the "total cost of the property," and whether \$50,000 of that amount were paid directly to the owner or to the person he had stipulated "should receive consideration" was a matter of perfect indifference to them.

Before leaving this matter it may be well to say something of the so-called services which were much discussed before us. It is clear that except as to a small part of the time, the "services" were not services such as are rendered by a servant to his master, an employee to his employer, but acts, etc., which were considered advantageous to the Commission though done with a view to Aird's own benefit. There is and can be no doubt that Aird down to the time he stood aside to permit direct negotiations was acting in respect of these "services" in his own interest and not in the interests of the Commission. What are represented as "services" are the furnishing of very considerable information concerning the property, which information had cost the previous interests who were trying to sell it a large sum; and his withdrawal at Mr. Magrath's request so that he might carry on direct negotiations with the owner. Mr. Magrath's purpose was to prevent Aird from getting in and stimulating a competition that might result in the Commission paying more for the property. Whether such services were worth the sum paid, we are not called upon to determine, having found that on the only actual transactions as approved by the Engineers, this sum was part of the total cost; but, should it be of importance we have the sworn estimate of an eminently competent business man of great experience and of undoubted and indubitable integrity, that this was his judgment. It should also be mentioned that after Aird assumed the different relationship he seems to have done what he could to assist in carrying through the purchase on terms more favourable to the Hydro than Mr. O'Brien was at first willing to accept. He had stipulated that he was selling his company's interest only in the properties

—that certain outstanding interests were not to be got in by him. The Hydro insisted otherwise and ultimately had its way, Mr. Aird having intervened at a critical point and prevented the negotiations from falling through. No doubt he thus served his own interests but he also served the Hydro in the precise way Mr. Magrath contemplated might be possible.

On the facts proved beyond controversy we have no doubt whatever of “the propriety of the payment by the Hydro-Electric Power Commission of Ontario to John Aird, Jr., of the sum of \$50,000 in connection with the purchase by the Hydro-Electric Power Commission of Ontario of the M. J. O’Brien Limited power interests on the Mississippi and Madawaska Rivers” and so respectfully report.

PAYMENT OF \$125,000 BY BEAUHARNOIS INTERESTS

The facts in this matter, so far as we have authority to enquire into them are not intricate, however unsatisfactory the evidence might be were our duty different.

Mr. Robert Oliver Sweezey was at all times pertinent to this inquiry President of what have been called the Beauharnois interests—and which, for convenience, we shall call the Beauharnois Company. This organization was intending to create electric power by works to be erected at the Beauharnois Rapids in the Province of Quebec, in the River St. Lawrence; and it was a matter of importance to it to sell part of the power so to be created to the Hydro-Electric Commission of Ontario. In this situation, John Aird, Jr., met Mr. Sweezey; and, in the result, after a contract had been secured from the Hydro-Electric Commission, he was paid the sum of \$125,000 on the direction of Mr. Sweezey, out of the funds of the Beauharnois Company.

So far as appears, two persons and two persons only knew why this sum was so paid; and the evidence of these two persons is diametrically and irreconcilably contradictory. Sweezey swears that it was given to Aird as a contribution to an election fund, a party fund; while Aird says that it was given for services to be rendered to the Beauharnois Company under an express contract. Were it our duty to determine the fact as to this, there would be difficulty; and we should require to have these witnesses examined before us in order to judge of their relative credibility. As the case stands, however, we have no right to decide or report as to the fact, unless it can be made to appear that this payment had some bearing upon the matter committed to us under our Commission with regard to the facts now under consideration, namely, the payment of \$125,000 by the Beauharnois interests to John Aird, Jr., and its relationship, if any, to the purchase of power by the Hydro-Electric Power Commission of Ontario. We think that is the proper meaning of the language used and we are not inclined to give it broader interpretation because if we did we would in our opinion extend it beyond what the Lieutenant-Governor in Council may, under The Public Inquiries Act (R.S.O. Cap. 20) authorize Commissioners to inquire into. Under that Statute his authority is limited to directing an inquiry “into and concerning any matter connected with the good Government of this Province or the conduct of any part of the public business thereof or the administration of justice therein.” The propriety of the payment as between Sweezey and Aird is not therefore a matter to be investigated by us.

It is common ground that Aird was warned not to approach the Hydro-Electric Commission in the matter at all, and that he did not do so; and the only suggestion of anything, the proper subject of inquiry by us, is that the money so paid was intended for the election fund of a political party in Ontario. The sole foundation for such a contention is the impression that Sweezey says Aird conveyed to him, though he (Sweezey) is unable to swear to any word or sign conveying such impression; and Aird positively contradicts Sweezey in this respect, and swears that the money was due to him by virtue of his agreement to perform services as asked; that he was not authorized to obtain money for any party and did not do so; moreover, all the money was kept by Aird and used for his own purposes. No one of any political party has been found who had any knowledge or intimation of anything of the kind. Nor was there any evidence on which we could rely for a finding that the payment had any relationship to the purchase of power by the Hydro-Electric Power Commission of Ontario. There was much evidence, oral and documentary, showing the course of the negotiations for the purchase of power from Beauharnois and after examining it with the greatest care, we have reached the conclusion that no matter what may have been the reason that induced Sweezey to part with the money, Aird did not receive it with any intention that it should be passed on to any political party or that it should have any effect on the purchase of power by the Hydro-Electric Power Commission of Ontario and it clearly had no such effect. It would be grossly unjust and improper to find that a political party was involved or had or expected to have any advantage from this payment.

We find then on the evidence submitted to us that while the payment of \$125,000 was made to Aird it had no relation to the purchase of power by the Hydro-Electric Power Commission of Ontario.

PURCHASE OF DOMINION POWER & TRANSMISSION COMPANY'S ASSETS

The Dominion Power & Transmission Company Limited, whose property, assets and undertaking were acquired by the Hydro Commission in March, 1930, was a holding company owning or controlling approximately fourteen subsidiaries some of which generated and distributed electrical energy throughout the Niagara Peninsula, in the Cities of St. Catharines and Hamilton, and west to Brantford and east to Oakville. For the purposes of this Report it is not necessary to draw any distinction between the parent Company and its subsidiaries and they will as a group be referred to as the Dominion Company.

Much of the evidence at the hearings was directed to the question whether the power development of the Dominion Company could, with advantage, be combined with that of the Hydro Commission, and it is desirable that something should first be said as to the general features of the two undertakings.

The Dominion Company came into existence about 1897 and until it was taken over by the Hydro Commission, its business was at all times ably and energetically managed. From about 1910 it had to divide the field with the Hydro yet its business increased and as time went on it required additional water with which to develop power to meet its expanding needs.

When electric energy is distributed in cities and commercial centres, there is a greater demand for power at some hours of the day than at others and when power is obtained from Hydro-Electric developments where water is brought by a natural or artificial channel some distance it is very desirable that near the point of development there shall be a lake or storage basin so that at times of peak demand the need for additional power may be supplied by discharging the stored water. At off-peak periods the storage basin is replenished and a suitable supply of water is again available when needed for peak purposes. If storage cannot thus be provided, a steam plant is sometimes installed for the supply of peak power.

The Dominion Company's chief source of power is at Decew Falls, approximately two miles above St. Catharines on a river known as the Twelve Mile Creek. It draws its water from the upper reach of the Welland Canal at Allanburg under a lease from the Dominion Government which entitles it to draw 1,000 cubic feet per second from the Canal, the water to be taken at a uniform rate so that the level of the water in the Canal will not be subjected to sudden fluctuations. The Dominion's power canal taps the Welland Canal and the water passes by gravity through the Dominion Company's power canal into a large expanse of water known as Gibson Lake, which extends to the edge of the escarpment overlooking the valley of Twelve Mile Creek. This storage capacity permits the allowable flow of the Dominion Company so far as not required for the development of power in the off-peak portions of the day to be stored in the lake or basin for use as required for peak purposes. This lay-out is eminently satisfactory but the Company has been limited in its supply of water and it has not had sufficient surplus water at off-peak periods to provide enough storage water to make full use of its storage possibilities for peak purposes. An increase in the available water from the Welland Canal would be of great benefit to the Dominion Company and it sought to obtain an additional 700 cubic feet per second that in the past has been required for leases now terminated or expected to be terminated at sites on the old Welland Canal. This water now flows past the intake to the Decew Falls waterways and when no longer required for leases on the old Canal will be available for others under lease from the Government. The Dominion Company has been anxious to obtain a lease of it and has contended that in the circumstances it should be given the lease in preference to any other possible applicant. This water added to its present flow would permit the Company to generate considerably more continuous horsepower and would supply more water for storage for peak purposes.

The situation with regard to the Hydro development is different. At the lower end of the Queenston-Chippawa power canal there is no natural storage capacity. It is possible to create a storage reservoir but it would have to be built artificially; that is to say, walls would have to be erected to enclose the storage area thereby creating an artificial lake. Water would not pass from the power canal to the storage area by gravity. It would have to be pumped during off-peak intervals from the canal to the reservoir and at time of peak load allowed to run back into the canal to develop necessary peak power. It is not suggested that this scheme presents special engineering difficulties but it has not the natural advantages of the Decew Falls site where water from the Welland Canal passes by gravity through the power canal into the storage area.

The advantage that would accrue to the Hydro by combining the Decew development with its system and using Decew for peak power can only be

determined by experts. It is a study for engineers. So also is the question of comparative value between such a scheme for peak power and storage of water in an artificial basin or the erection of steam plant. It is clear, however, that the value of the Decew plant for operation as a separate unit depends on very different considerations from those that apply if it is to be used for peak purposes as part of the Hydro system.

The negotiations leading up to the purchase of the Dominion Company's assets commenced in 1917 and though there were intervals when there were no discussions, they never seem to have been really abandoned, certainly not by the Hydro. Sir Adam Beck was Chairman of the Hydro Commission from its organization following the legislation of 1906-7 and he continued Chairman until his death in 1925. He was responsible for the policies that governed the Hydro during his chairmanship and since. He at all times wanted an adequate supply of power from the most economical sources and he desired a monopoly on the part of the Hydro at any rate in the distribution of electrical energy. It was his wish to avoid the duplication of capital and the waste of effort and of power that results from unnecessary competition. From the beginning, however, it is quite plain that it never was the intention of Sir Adam Beck or of those associated with him in the Hydro or their successors to use the money of the Province of Ontario for the preposterous scheme of crushing out private enterprise. Sir Adam when approached in 1917 definitely indicated his interest in the proposal of Mr. George Lynch Staunton, K.C., solicitor for the Dominion Company, that the Hydro should purchase the undertaking of the Dominion Company, the price suggested being \$20,000,000. Such a purchase would be entirely consistent with the Hydro policy. Nothing came of the negotiations of that year, though it appears that in November Hydro engineers were instructed to obtain data regarding the Dominion Company's undertaking.

In April, 1919, negotiations were renewed with Sir Adam Beck by Mr. A. J. Nesbitt of Nesbitt-Thomson who directly or through companies was largely interested in the Dominion Company and was retained to act and did act in the subsequent negotiations looking to purchase. The result of conferences between Sir Adam and Mr. Nesbitt was that Hydro engineers commenced a thorough examination of the Dominion Company's undertaking and properties. The Company's records as to costs were scrutinized, the plant and equipment were appraised, power contracts were examined and much time was spent in obtaining all necessary data. The result was that a report and valuation prepared at considerable expense and in great detail was submitted to the Hydro Commission by its engineers in June, 1920. It was prepared on the basis of physical value only nothing being included for good-will or other intangible values. In 1920 Sir Adam Beck wrote to Sir John Gibson, the President of the Company, stating that he had examined the Engineer's Report and would be "in a position next week to take up officially with the representatives of your Company who have been duly authorized to act on its behalf the negotiations respecting the Dominion Power & Transmission Company's properties." In February, 1921, Sir Adam wrote Mr. J. R. Moodie, then President of the Company, stating that he would be pleased if Mr. Moodie would let him know whether it was his desire that the matter of purchase be considered or dealt with further or be definitely closed for the present. There is no record of any reply to either of these letters and negotiations for the purchase of the plant were at this time for some reason closed by the Company not desiring to carry

negotiations further. All documents and data obtained by the Commission's engineers were at a later date returned to the Dominion Company.

In 1924 an attempt was made by the Hydro to acquire from the Dominion Company certain distribution systems in Burlington, Burlington Beach, Stoney Creak and Beamsville, but after negotiations extending until November, 1925, the Dominion Company refused to sell. In the following year the Dominion Company endeavoured to purchase from the Hydro 10,000 k.w. (14,000 h.p.) of off-peak power, indicating that its business was still expanding and that it was well aware of the potential value of its storage facilities for peak-power purposes.

In 1927 negotiations with regard to purchase were again opened by Mr. Nesbitt with Mr. Magrath, the Hydro Chairman. After preliminary discussions the Hydro engineers commenced a revaluation of the Company's properties, using the 1920 appraisal as a basis. It is clear that by this time the Hydro was concerned to find suitable additional peak-power capacity. From 1927 to 1929 that subject engaged the special consideration of the Hydro engineers who were reporting on the Dominion properties. The possibilities of the Decew development were early recognized as affording an attractive solution and detailed studies were made by the Hydro engineers as to the value of the Dominion properties for incorporation with the Hydro system. They reported to the Commission on the 3rd January, 1929, that a 200,000 h.p. peak-load plant could be erected and so co-ordinated with the Hydro system as to warrant the Commission in paying \$21,000,000 for the Dominion Company's assets, treating the radial railways as having a scrap value only. This conclusion was reached by the engineers without any outside influence but solely on the merits of the proposition.

The Commission having received the Report of the Engineers decided to refer it to Mr. G. T. Clarkson of Messrs. Clarkson, Gordon, Dilworth, Guilfoyle & Nash, the auditor and financial adviser of the Commission, for his consideration and advice. (It is interesting in this connection to note that when Sir Adam Beck was considering the purchase of these properties in 1919 he also spoke to Mr. Clarkson about rendering assistance to the Commission, if the negotiations for purchase proceeded, after the Engineers made their Report.) Mr. Clarkson considered the Engineers' Reports of January, 1929, with great care and made a complete study of the situation on his own account. He was of opinion that if the Dominion properties were to be operated independently of the Hydro their value would not exceed \$16,000,000 or \$17,000,000 and he was at first critical of the suggestion that they were worth some four or five millions more to the Hydro for peak purposes in combination with its system. In the end, however, after the most thorough consideration of all reports and data and many conversations with the Hydro engineers collectively and individually he was satisfied that the engineers were right in their conclusions and he so reported to the Commission. Mr. Clarkson at the request of the Commission took an active part in negotiating the price. It was finally agreed to at \$21,000,000 as of December 31st, 1929.

The purchase of the Dominion assets and undertaking resulted in many important advantages to the Commission. It made possible the production of peak power at a lower cost than it could be supplied by any other means; it prevented the undertaking being acquired by interests unfriendly to Hydro, a real menace at that time; it did away with the keenest possible competition in a large and important area of the Province; it eliminated the duplication of

plant and services on highways; it stopped the installation in the same area of equipment for 25-cycle current for Hydro customers and 66 $\frac{2}{3}$ cycle for Dominion, a condition that made co-ordination of the two systems more difficult as time went on; it prevented the Dominion Company making contracts for power and expending large sums on proposed works which would increase the purchase price at a later date without any corresponding benefit to the Commission as a purchaser; and it also prevented competition between the two corporations for water that may in the future become available from Lake Erie.

We unhesitatingly find that the purchase in the circumstances existing at the time was in the public interest; was made after full and adequate investigation; was reasonable as to price and was not prompted by any motive other than the public good.

Although the Commission's programme has not been carried out as contemplated in view of existing industrial conditions, the operation of the properties independently by the Hydro shows a surplus after paying interest on purchase price, operation and maintenance charges, including those of the electric railways. The radial lines have been abandoned as contemplated when the purchase was made. It possibly should be pointed out that expropriation of the assets and undertaking was impossible as they included properties which the Hydro has not power to acquire by compulsory purchase. Had the Hydro expropriated those properties only that it was entitled to acquire by compulsory purchase, large claims would have resulted because of severance of the properties. In our opinion expropriation would have been unwise in the circumstances of the case.

The negotiations having extended over so long a period, it is not surprising to find that at times there were fluctuations in the market price of the shares of the Dominion Company. This feature attracted the attention of the Honourable Mr. Justice Middleton and he, on the first day of the inquiry, directed that an investigation should be made to ascertain whether persons having confidential information had been trafficking in the shares. Accordingly a most thorough examination was made into the transfer books of the Dominion Company and the records of the Toronto Curb Exchange where the shares are listed. Banks, trust companies and brokers were called upon to make returns of their transactions in the shares in the years 1928, 1929 and 1930 and oral testimony was taken. We beg to report that after a most extensive search no trace was found of a single transaction in the Company's shares by anyone having confidential information.

In conclusion we desire to express our appreciation of the Hydro staff. In all matters inquired into we found that the Hydro engineers exercised great care and skill in the discharge of their duties. Mr. F. A. Gaby has been Chief Engineer since 1912 and it is satisfactory to be able to report that no suggestion whatever was made of any impropriety on his part or on the part of any of his staff; on the contrary during the inquiry he and the staff were referred to in most complimentary terms. We find that in respect of the matters inquired into the business and dealings of the Commission and its staff have in every respect been conducted on the highest business principles and with great skill and rectitude.

Respectfully submitted,

WILLIAM RENWICK RIDDELL.

Toronto, 31st October, 1932.

GEORGE H. SEDGEWICK.



